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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact: _____, ID No. _____

Telephone Number:

Refer Reply To:
CC:PSI:B01
PLR-102236-13

Date:
June 05, 2013

Legend:

$$\underline{X} =$$
A =Trust =State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear _____ :

This letter responds to your request, on behalf of X, dated December 31, 2012, for a written determination granting relief under section 1362(f) of the Internal Revenue Code.

Facts

X was incorporated under the laws of State on Date 1. X elected to be treated as an S corporation effective Date 2. On Date 3, shares of X were transferred to Trust, an ineligible shareholder. On Date 4, after discovery of the transfer to an ineligible shareholder, Trust transferred its X shares to A, an individual.

X represents that X's shareholders have at all times since Date 2 treated X as an S corporation and that the termination of X's S election was not motivated by tax avoidance or retroactive tax planning. X further represents that A has reported all tax items allocated from X to Trust and paid all taxes related to those items for the period during which Trust held X stock. X and its shareholders agree to make any adjustments consistent with the treatment of X as an S corporation that may be required by the Secretary.

Law and Analysis

Section 1361(a)(1) provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for the year. Section 1361(b)(1) defines a "small business corporation" as a domestic corporation that is not an ineligible corporation and that does not (A) have more than 100 shareholders, (B) have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in §1361(c)(6)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more than 1 class of stock.

Section 1362(d)(2)(A) provides that an election under § 1362(a) shall be terminated whenever (at any time on or after the 1st day of the taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation.

Section 1362(f) provides, in part, that if (1) an election under § 1362(a) by any corporation was terminated under § 1362(d)(2); (2) the Secretary determines that the circumstances resulting in such termination were inadvertent; (3) no later than a reasonable period of time after discovery of the circumstances resulting in such termination, steps were taken so that the corporation for which the termination occurred is a small business corporation; and (4) the corporation for which the termination occurred, and each person who was a shareholder in such corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of such corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such termination, such corporation shall be treated as an S corporation during the period specified by the Secretary.

Conclusion

Based solely on the facts submitted and representations made, we conclude that X's S corporation election terminated on Date 3 because Trust was an ineligible shareholder of X. We further conclude that the termination of X's S corporation election was an inadvertent termination within the meaning of § 1362(f). Under the provisions of § 1362(f), X will be treated as an S corporation from Date 3, and thereafter, provided that, apart from the inadvertent termination described above, X's S corporation election was otherwise valid and has not otherwise terminated under § 1362(d).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Joy C. Spies

Joy C. Spies
Senior Technician Reviewer, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy of this letter for section 6110 purposes

cc: